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HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. (C) NO. 597 OF 2006

APPELLANT — Bisahu Ram Thakur.

Versus

RESPONDENTS — Dwarika Prasad Kevat & another

JUDGMENT

(17 April, 2007)

POST FOR ORDER ON 17-04-2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. (C) NO. 597 OF 2006

APPELLANT Non-applicant No.2	Bisahu Ram Thakur, aged 53 yrs, s/o Shri Kuwar Singh Thakur, r/o Sanjay Kirana Bhandar, Azad Chouck: Bhilai-3, Distt. Durg.
Versus	
RESPONDENTS Applicant	1.Dwarika Prasad Kevat, aged 45 years, s/o Shri Mahettar Kevat, r/o Gram: Sirsakala, Bhilai-3: Tah- Patan Distt: Durg CG.
Non-applicant-1	2. Kapoor Lal Sahu, aged 29 yrs, s/o Shri Bise Lal r/o Azad Chouck: Bhilai 3, Distt Durg CG

Present:

Mr. M.P.S. Bhatia, Advocate for the appellant.

Mr. Santosh Sahu, Advocate for respondent No.1.

Mr. Ravindra Agarwal, Advocate for respondent No.2.

J U D G M E N T

(Delivered on 17 /04/2007)

Dhirendra Mishra, J

1) This is an owner's appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988') against the award dated 26th August 2006 passed in Claim Case No.83/06 by the 11th Additional Motor Accident Claims Tribunal (F.T.C.), Durg (C.G.) whereby award for a sum of Rs.62,500/- has been passed in favour of the claimant/respondent No.1 herein.

2) Respondent No.2 herein is the driver & appellant is the owner of tempo bearing registration number MP24-7210.

3) Case before the tribunal of respondent No.1 herein was that on 3.4.2001 when his mother namely Maanbai was crossing the road, respondent No.2-Kapoor Lal Sahu driving the tempo bearing

registration number MP24-7210 rashly and negligently dashed his tempo from wrong side as a result of which his mother sustained grievous injuries and she was admitted in the District Hospital Durg, where she died on 9.4.2001. Merg intimation was given and under Crime No.246/01 offence under Section 304-A of the IPC was registered against the driver Kapoor Lal Sahu, the vehicle was seized and charge sheet was filed against him in the court of Judicial Magistrate 1st Class, Durg. The tribunal vide order dated 23.9.2002 passed an interim award of Rs.50,000/- in favour of the claimant under Section 140 of the Act.

4) In the joint reply the owner & driver denied that their tempo was involved in the accident. No report was lodged till 9.4.2001 the date on which Maanbai died. The accident was, in fact, caused by some scooter belonging to the relative of the deceased and driver Kapoor Lal Sahu and tempo of the owner have been falsely implicated in the accident with the collusion of the doctor of Government Hospital and Sub Inspector of Police. It was also stated that a complaint was made to the higher authorities and the Chief Minister against their false implication.

5) On the basis of the pleadings of respective parties issues have been framed by the tribunal and it was held that accident was caused by the vehicle of non-applicant No.2 on 3.4.2001 as a result of which Maanbai died and non-applicants are jointly and severally liable to pay compensation of Rs.62,500/- to the claimant with interest @ 6% per annum from the date of application i.e. 2.7.2001.

6) The appellant has challenged the award on the following grounds:-

   a) The driver of vehicle was acquitted by the criminal Court with a categorical finding that there is no evidence on record to prove that the vehicle in question caused the accident. However, the tribunal on the face of it has recorded a perverse finding that criminal Court has held that Maanbai died due to injuries

sustained by her in the accident dated 3.4.2001 caused by tempo bearing registration number MP26/7210, though there is no such finding recorded by the Judicial Magistrate 1st Class while acquitting the driver Kapoor Lal Sahu.

b) The claimant was not dependent on his mother and therefore, the claim petition ought to have been dismissed.

c) Finding of the tribunal is based on improper appreciation of evidence of respective parties and statement of eyewitness namely Yudhisthir Chandrakar (DW-3), who has stated that the accident was caused by the scooter, has not been considered.

7) On the other hand, learned counsel for the claimant/respondent No.1 submitted that the driver of vehicle was prosecuted for the above accident, as charge sheet was filed against him under Section 304A of IPC after due investigation. Finding of the criminal Court acquitting the driver of vehicle from the charge under Section 304-A of IPC has no bearing whatsoever for adjudication of the claim petition and the same is to be decided only on the basis of evidence adduced before the claims tribunal. The tribunal on the basis of pleadings of the respective parties and evidence adduced by them, has recorded a finding of fact which is based on the statement of eyewitness as also on the documentary evidence adduced by the claimant and therefore, same cannot be faulted. The contention that the accident was caused by the scooter and not by tempo is belied from the postmortem report as nature and place on injury indicates the involvement of the type of vehicle as per Doctrine of *Res-ipsa Loquitor.*

8) I have heard learned counsel for the respective parties and perused the material available on record.

9) The claimant has filed and proved the documents along with his claim application being final report, first information report, medico legal report dated 3.4.2001 of the deceased along with memo of

concerned police station, inquest & post mortem reports of Maanbai, seizure memo of vehicle causing accident along with other relevant papers. Whereas, non-applicants have filed and proved the statement of witnesses recorded in criminal case No.917/02, merg intimation, memo of investigating officer to the doctor of District Hospital, Durg his complaint to the Superintendent of Police & the Chief Minister and certified copy of the judgment of acquittal. Applicant-Dwarika Prasad examined himself as AW-2 and Kishunu as AW-1, whereas, the appellant herein has examined himself as AW-1, Sukhram as AW-2, Yudhishtir Chandrakar as AW-3 and driver Kapoor Lal Sahu as AW-4.

10) So far as the finding of the tribunal recorded in Paragraph 10 of the award that from perusal of the judgment of criminal Court it is proved that Maanbai died due to injuries sustained by her in the accident dated 3.4.2001 caused by tempo bearing number MP 24-7210 is concerned, from bare perusal of Paragraph 9 of the judgment of the criminal Court the above finding appears to be perverse, because the criminal Court has acquitted the accused with a finding that there is no evidence on record that the accident was caused by the vehicle of the appellant herein or that the vehicle was being driven at that time by accused Kapoor Lal Sahu, as no eyewitness has deposed the above fact. However, for the purpose of deciding the claim application under Section 166 of the Act, the judgment of acquittal recorded by the criminal Court cannot be made a basis and claim applications are to be decided on its own merit on the basis of documentary and oral evidence available on record.

11) In the instant case, as already mentioned earlier, the claimant has filed the documents being the complete charge sheet, which was filed by police against the driver Kapoor Lal Sahu after due investigation including memo sent by the Investigating Officer dated 3.4.2001 and pursuance thereof the medico legal report of Maanbai

dated 3.4.2001 i.e. the date of accident, in which injuries sustained by Maanbai have been described. From perusal of above document, which has been exhibited as Ex.P-4 and proved by AW-2 Dwarika Prasad, the applicant himself, it is clear that police had information on that day itself that the accident was caused by tempo belonging to Sanjay Decorations, Bhilai-3. There is no cross-examination of Dwarika Prasad (AW-2) with respect to the document of Ex.P-4 and the same remains unchallenged.

12) Kishunu (AW-1) has stated that he had gone to Village Sirsakala in the house of Ram Swaroop Kewat, on the date of incident at about 11.00 a.m. a tempo, loaded with tent material, was coming from Bhilai side, which was being driven rashly, at that time an old lady was also coming from Bhilai side, whose name he does not know. The tempo dashed her as a result of which she fell down on the ground, driver of the tempo alighted from the tempo and told him his name as Kapoor and thereafter ran away. He has been subjected to lengthy cross-examination to highlight that he is highly interested witness. It has been suggested that since he belongs to the same caste as that of the applicant, he is giving false evidence. He has stated in cross-examination that he narrated this incident to Manoj, as he was also present in the crowd, which had gathered after the accident.

13) Appellant/non-applicant (DW-1) has stated that he is engaged in the tent house business and is the owner of tempo which he uses as a delivery van. However, on the date of incident his vehicle was parked before a shop and on that day it was not sent for any work. He learnt about the incident through newspaper that number identical to his vehicle number was involved in an accident with Maanbai. He enquired from the villagers of Village Sirsakala and came to know that Maanbai was met accident with scooter. He had complained with the higher authorities and on his complaint, C.S.P., Cantt. conducted enquiry and statements of witnesses were recorded, however, charge sheet was filed against his driver Kapoor

Lal Sahu. Similar is the evidence of driver Kapoor Lal Sahu. However, both of them filed joint reply to the claim petition in which both have mentioned that on 3.4.2001 i.e. the date of incident, their tempo had gone to the house of Narayan of Village Sirsakala to bring back the material of Sanjay Kiraya Bhandar and they have denied this fact in their statement on oath. The other two witnesses examined are Sukhram (AW-2) & Yudhisthir Chandrakar (AW-3). Sukhram (AW-2) has stated that he had not witnessed the incident and a resident of Sirsakala namely Yudhisthir informed him that one scooter had caused the accident in which Maanbai sustained injuries. Yudhisthir (AW-3) did not tell him personally about the same but he overheard him in the hotel. Sukhram & Bisahu have tried to impeach the credibility of Kishunu by stating that he is in fact brother-in-law of claimant Dwarika Prasad and he has suppressed this fact. This fact was narrated by them when they were re-examined on 21.4.2006 i.e. almost more than two years after the examination of Kishunu wherein they have stated that they went to Kishunu's village Aarkaar and enquired about him and there they learnt that he is brother-in-law of claimant Dwarika Prasad and as such he is an interested witness. Yudhisthir Chandrakar has claimed himself to be an eyewitness and stated that on the date of incident when he was going to some provision shop, he saw that one scooter was coming from Bhiali side, the scooterist dashed Maanbai with his scooter as a result of which Maanbai fell down, the scooterist also fell down. They had stopped the scooterist and crowd had gathered. In the meanwhile, Manoj, grandson of Maanbai, came there and said that the scooterist is his maternal uncle's son and thereafter he was let off. In Para 3 of statement firstly he has stated that after the incident the tempowala was apprehended by Lekhram Chandrakar, however, he corrected it and said in fact the scooter wala was apprehended.

14) From perusal of the statements of above witnesses examined by the non-applicants, I am of the opinion that the above witnesses are not the witnesses of truth. Though there is inconsistency in the statement of Kishunu also examined by the applicant, but overall considering the facts that on the date of incident Maanbai was admitted in the District Hospital, Durg and on the same date police had sent a communication for obtaining medico legal report of Maanbai in which it has been mentioned that the accident was caused by the tempo of Sanjay Decorators, Bhilai-3 and the fact that the document (Ex.D-9) filed by the non-applicants, a memo dated 3.4.2001 addressed to the Medical Officer, Government Hospital, Durg in which it is mentioned that Maanbai has sustained injuries in an accident with tempo belonging to Sanjay Decorators of Bhilai-3 and they want to record her statement and the reply to this communication of the doctor stating that she is not in a position to make statement goes to show that the accident was caused by tempo belonging to Sanjay Decorators and false defence has been taken by the driver & owner, as an afterthought, that the accident was caused by scooter.

15) On the basis of aforesaid discussion, I am of the considered opinion that the finding of the tribunal below that tempo number MP24-7210 had caused the accident on 3.4.2001 as a result of which Maanbai sustained injuries and was admitted in the hospital, where she died on 9.4.2001 is based on the evidence available on record. So far as the challenge to the quantum of compensation is concerned, in a death case where an old lady of 65 years age died in a motor vehicle accident, award of Rs.62,500/- as compensation to her son, cannot be faulted.

16) In the result the appeal being devoid of substance deserves to be dismissed and the same is hereby dismissed. No order as to costs.

Sd/-
Dhirendra Mishra
Judge

Roshan/-